

**MASSACHUSETTS**

Public Employee Retirement Administration Commission

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**M E M O R A N D U M**

TO: Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Investments

DATE: January 26, 2001

During the course of the last year the Commission has contacted boards on several occasions regarding investment activities and the need for board members to take care in fulfilling these responsibilities. We have emphasized the importance of education and the fiduciary duty owed by board members to the members of the retirement system and their beneficiaries.

This period has also seen developments in other pension funds here and in other states that underscore the need for board members to comply with PERAC Regulations and statutes concerning ethics and fiduciary duty. The investment of billions of dollars of pension assets is perhaps the most sensitive function that boards undertake. Although positive investment returns are not something that you can guarantee to your membership compliance with your fiduciary duty is something that those members should be able to count on.

PERAC's Investment Regulations now emphasize compliance with that duty. The need for board members, consultants, managers and other vendors to avoid and/or disclose conflicts of interest is one of the cornerstones of the Regulations. The importance of following a competitive process in selecting vendors is also a basic element of your fiduciary duty. One need not look beyond the daily headlines to note the danger of ignoring the requirement that a competitive process be followed.

PERAC Regulations 17.01 – 17.04 deal with the issue of a Code of Ethics for Fiduciaries, Standards of Conduct for Fiduciaries and Standards of Conduct for Qualified Investment Managers. 840 CMR 17.03 is particularly relevant. It states:

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“Every Fiduciary shall know and comply with all applicable provisions of M.G.L. c.268A governing the conduct of public officials and employees and shall conform to the standards of conduct prescribed by M.G.L. c.268A, S.23.”

Pursuant to 840 CMR 17.04 (10)(a) investment managers and consultants are deemed to have agreed with the retirement board to be liable for any losses due to a violation of Chapter 32, Section 23 (Fiduciary Duty) or of 840 CMR 17.00 including violation of the code of ethics set forth in 840 CMR 17.02 or the standards of conduct set forth in 840 CMR 17.03 and 17.04. In addition managers and consultants may be removed from providing services to the boards if the Commission determines that the manager or consultant has violated any of the provisions of Chapter 32, Section 23 or 840 CMR 17.00, 17.02, 17.03 and 17.04.

The Commission would like to stress that if a manager or consultant is so removed that manager or consultant may not provide services to any retirement board (840 CMR 17.04 (10)(b)).

Board members and vendors have now operated under the revised PERAC Regulations for several years. In that time we have also issued Guidelines to address matters not addressed in the Regulations. In addition we have expanded the areas that may be dealt with through the adoption by the board of Supplementary Regulations. We believe that all impacted parties have had sufficient experience under the revised PERAC Regulations to insure full compliance. As we move forward, we anticipate aggressive enforcement of the Regulations particularly those noted above.